

82 - 1540

No. 82-

Office - Supreme Court, U.S.

FILED

MAR 17 1983

ALEXANDER L. STEVAS,
CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1982

WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY, *et al.*,
Petitioners,

v.

ROBERTO QASIM, *et al.*,
Respondents.

**PETITION FOR A WRIT OF CERTIORARI TO THE
DISTRICT OF COLUMBIA COURT OF APPEALS**

E. BARRETT PRETTYMAN, JR.*
VINCENT HAMILTON COHEN
ROBERT B. CAVE
PAUL J. LARKIN, JR.
HOGAN & HARTSON
(a partnership including
professional corporations)
815 Connecticut Ave., N.W.
Washington, D.C. 20006
(202) 331-4685
Attorneys for Petitioner

* Counsel of Record

QUESTIONS PRESENTED

1. Whether the Eleventh Amendment to the Constitution of the United States bars suit:

- (a) brought against an agency which has been specifically delineated in the controlling interstate compact as "an instrumentality and agency" of the signatory States, performing "an essential governmental function";
- (b) brought in a court created by Congress under Article I rather than Article III; and, which is
- (c) brought by a resident of the District of Columbia rather than a resident of a State.

2. Whether an interstate compact that allows suits only in federal District Courts and the courts of the signatory States can nevertheless be interpreted to allow suits in a local court of the District of Columbia.

3. Whether the court below erred in holding, contrary to the express terms of an interstate compact approved by Congress, that the subsequently-enacted District of Columbia Court Reform and Criminal Procedure Act of 1970 gives the courts of the District of Columbia subject matter jurisdiction over private tort damage suits against an interstate agency, even though neither the text nor legislative history of the Act mentions the Compact or suggests that Congress was aware of the Act's potentially revisionary effect.

LIST OF PARTIES

The Plaintiff-Appellant in case No. 81-1344 before the District of Columbia Court of Appeals was Roberto Qasim, in case No. 81-1616 was Sallie C. Baker, in case No. 81-1613 was Annie Carter, in case No. 82-345 was Frances Green, in case No. 81-1476 was Oleon Jones, and in case No. 82-301 was Willie James Artis. In case No. 82-56, Sandra C. Butterfield and Larry V. Butterfield were Plaintiffs-Appellants.*

The Washington Metropolitan Area Transit Authority was Defendant-Appellee in all cases, and its employee Anthony R. Stewart was a Defendant-Appellee in case No. 81-1476. Deborah M. Reeder was a Defendant-Appellee in case No. 81-1344.**

*Case No. 82-56 was omitted from the January 26, 1983, *en banc* decision and judgment of the Court of Appeals (App. 2a), but the *en banc* Court of Appeals on March 8, 1983, *sua sponte* amended the caption to its January 26 decision to include case No. 82-56. App. 19a.

**Two cases, Nos. 81-1422 and 82-226, were initially consolidated before the *en banc* Court of Appeals, but were subsequently severed. The Plaintiff-Appellant in case No. 81-1422 was Louise Nixon and in case No. 82-226 was James E. Lagroom. The Washington Metropolitan Transit Authority was Defendant-Appellee in both cases. The District of Columbia and the Authority's employee Curtis R. Hatten were defendants in case No. 82-226, but did not appear before the District of Columbia Court of Appeals.

A fictitious person, "John Doe," was also named as a defendant in case No. 81-1422. In Plaintiff-Appellant's Certificate of Interested Parties, required by Rule 28(a)(1) of the General Rules of the District of Columbia Court of Appeals, Plaintiff-Appellant Nixon listed WMATA employee Roland Truehart as a party, but Mr. Truehart was not named as a party in plaintiff's complaint and the complaint was never amended to add him as a party.

In case No. 81-1344, Sudah Qasim appeared as a plaintiff in the Superior Court, but did not appear before the Court of Appeals. In case No. 81-1616, Napoleon Lewis, Marjorie B. Rice, and Clarence E. Taylor were defendants, but did not appear before the Court of Appeals.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
LIST OF PARTIES	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
JURISDICTION	2
RELEVANT CONSTITUTIONAL AND STATU- TORY PROVISIONS	2
STATEMENT OF THE CASE	2
STAGES AT WHICH THE FEDERAL QUESTIONS WERE RAISED AND PRESERVED	7
ARGUMENT	8
A. Introduction	8
B. The Eleventh Amendment	11
C. The WMATA Interstate Compact	24
CONCLUSION	28
APPENDICES	1a
APPENDIX A—Court of Appeals’ decision deny- ing Petitioner’s Motion for a Stay of the Mandate Pending Petition for a Writ of Certiorari..	1a
APPENDIX B—Court of Appeals’ decision	2a
APPENDIX C through H—Superior Court judges’ orders....	9a
APPENDIX I—Relevant Constitutional and Statu- tory Provisions	15e
APPENDIX J—Court of Appeals’ order amend- ing Judgment to Add an Addi- tional Case to Judgment	19a

TABLE OF AUTHORITIES

Cases:	Page
<i>Alabama v. Pugh</i> , 438 U.S. 781 (1978)	21
<i>American Ins. Co. v. Canter</i> , 26 U.S. (1 Pet.) 511 (1828)	20
<i>Austin v. City of Baltimore</i> , 286 Md. 51, 405 A.2d 255 (1979)	17
<i>Birnberg v. WMATA</i> , 389 F. Supp. 340 (D.D.C. 1975)	17
<i>Board of Educ. v. Rowley</i> , 102 S. Ct. 3034 (1982) ..	28
<i>Board of Supervisors v. Massey</i> , 210 Va. 253, 169 S.E.2d 556 (1969)	17
<i>Board of Trustees of Howard College v. John K. Ruff, Inc.</i> , 278 Md. 580, 366 A.2d 360 (1976)	17
<i>Bolling v. Sharpe</i> , 347 U.S. 497 (1954)	10
<i>Brown v. Board of Educ.</i> , 347 U.S. 483 (1954)	10
<i>Byram River v. Village of Port Chester</i> , 394 F. Supp. 618 (S.D.N.Y. 1975)	14
<i>Callan v. Wilson</i> , 127 U.S. 540 (1888)	10
<i>Cary v. Curtis</i> , 44 U.S. (3 How.) 236 (1845)	15
<i>Chisholm v. Georgia</i> , 2 U.S. (2 Dall.) 419 (1793) ..	19, 23
<i>City of Fairfax v. WMATA</i> , 582 F.2d 1231 (4th Cir. 1978), cert. denied, 440 U.S. 914 (1979)	17
<i>Cory v. White</i> , 102 S. Ct. 2325 (1982)	21
<i>Council of Commuter Org. v. Metropolitan Transp. Auth.</i> , 683 F.2d 663 (2d Cir. 1982)	13
<i>Council of Commuter Org. v. Metropolitan Transp. Auth.</i> , 515 F. Supp. 36 (S.D.N.Y. 1981), aff'd, 683 F.2d 663 (2d Cir. 1982)	13
<i>C.T. Hellmuth & Assoc., Inc. v. WMATA</i> , 414 F. Supp. 408 (D. Md. 1976)	17
<i>Cuyler v. Adams</i> , 449 U.S. 433 (1981)	8, 14
<i>Delaware River Joint Toll Bridge Comm'n v. Colburn</i> , 310 U.S. 419 (1940)	16
<i>District of Columbia v. Carter</i> , 409 U.S. 418 (1973)	10
<i>District of Columbia v. Solomon</i> , 275 A.2d 204 (D.C. 1971)	26
<i>Duhne v. New Jersey</i> , 251 U.S. 311 (1920)	15
<i>Edelman v. Jordan</i> , 415 U.S. 651 (1974)	22, 27
<i>Elizabeth River Tunnel Dist. v. Beecher</i> , 202 Va. 452, 117 S.E.2d 685 (1961)	17

TABLE OF AUTHORITIES—Continued

	Page
<i>Employees v. Department of Public Health & Welfare</i> , 411 U.S. 279 (1973)	22, 27
<i>Ex parte Young</i> , 209 U.S. 123 (1908)	14
<i>Feldman v. Gardner</i> , 661 F.2d 1295 (D.C. Cir. 1981), cert. granted sub nom. <i>District of Columbia Court of Appeals v. Feldman</i> , No. 81-1335 (June 28, 1982)	11
<i>Fitzpatrick v. Bitzer</i> , 427 U.S. 445 (1976)	22
<i>Ford Motor Co. v. Department of Treasury</i> , 323 U.S. 459 (1945)	24
<i>Geofroy v. Riggs</i> , 133 U.S. 258 (1890)	10
<i>Great Northern Life Ins. Co. v. Read</i> , 322 U.S. 47 (1944)	21
<i>Hans v. Louisiana</i> , 134 U.S. 1 (1890)	21
<i>Hepburn v. Ellzey</i> , 6 U.S. (2 Cranch) 445 (1805) ..	10
<i>Hopkins v. Clemson Agric. College</i> , 221 U.S. 636 (1911)	21
<i>Howell v. Port of New York Auth.</i> , 34 F. Supp. 797 (D.N.J. 1940)	13
<i>Hubbell v. United States</i> , 289 A.2d 879 (D.C. 1972)	25
<i>Hurd v. Hodge</i> , 334 U.S. 24 (1948)	10
<i>In re New York</i> , 256 U.S. 490 (1921)	21
<i>Jacobson v. Tahoe Regional Planning Agency</i> , 566 F.2d 1353 (9th Cir. 1977), rev'd on other grounds sub nom. <i>Lake Country Estates, Inc. v. Tahoe Regional Planning Agency</i> , 440 U.S. 391 (1979)	13
<i>Katz v. Washington Suburban Sanitary Comm'n</i> , 284 Md. 503, 397 A.2d 1027 (1979)	17
<i>Kawananakoa v. Polyblank</i> , 205 U.S. 439 (1907) ..	22
<i>Kennecott Copper Corp. v. State Tax Comm'n</i> , 327 U.S. 573 (1946)	24
<i>Key v. Doyle</i> , 434 U.S. 59 (1977)	10
<i>Kozikowski v. Delaware River Port Auth.</i> , 397 F. Supp. 1115 (D.N.J. 1975)	13
<i>Ladue Local Lines, Inc. v. Bi-State Development Agency of the Missouri-Illinois Metropolitan Dist.</i> , 433 F.2d 131 (8th Cir. 1970)	13

TABLE OF AUTHORITIES—Continued

	Page
<i>Lake Country Estates, Inc. v. Tahoe Regional Planning Agency</i> , 440 U.S. 391 (1979)	<i>passim</i>
<i>Larson v. Domestic & Foreign Corp.</i> , 337 U.S. 682 (1949)	15
<i>Malone v. Bowdoin</i> , 369 U.S. 643 (1962)	15
<i>Monaco v. Mississippi</i> , 292 U.S. 313 (1934)	21, 22
<i>Morton v. Mancari</i> , 417 U.S. 535 (1974)	27
<i>Nevada v. Hall</i> , 440 U.S. 410 (1979)	6, 10, 19, 20
<i>New Hampshire v. Maine</i> , 426 U.S. 363 (1976)	14
<i>New York v. New Jersey</i> , 256 U.S. 296 (1921)	15
<i>North Dakota v. Minnesota</i> , 263 U.S. 365 (1923) ..	20
<i>Northern Pipeline Construction Co. v. Marathon Pipeline Co.</i> , 102 S. Ct. 2858 (1982)	11
<i>Palmore v. United States</i> , 411 U.S. 389 (1973) ..	5, 6, 11, 19
<i>Parden v. Terminal Ry.</i> , 377 U.S. 184 (1964)	22
<i>Pennhurst State School & Hospital v. Halderman</i> , 451 U.S. 1 (1981)	27
<i>Pernell v. Southall Realty</i> , 416 U.S. 364 (1974) ..	10
<i>Petty v. Tennessee-Missouri Bridge Comm'n</i> , 359 U.S. 275 (1959)	12, 14, 23
<i>Petty v. Tennessee-Missouri Bridge Comm'n</i> , 153 F. Supp. 512 (E.D. Mo. 1957), <i>aff'd</i> , 254 F.2d 857 (8th Cir. 1958), <i>rev'd on other grounds</i> , 359 U.S. 275 (1959)	13
<i>Porto Rico v. Castillo</i> , 227 U.S. 270 (1913)	22
<i>Posadas v. National City Bank</i> , 296 U.S. 497 (1936)	27
<i>Potomac Electric Power Co. v. State Corp. Comm'n</i> , 221 Va. 632, 272 S.E.2d 214 (1980) ..	17
<i>Rao v. Port of New York Auth.</i> , 122 F. Supp. 595 (E.D.N.Y. 1954), <i>aff'd</i> , 222 F.2d 362 (2d Cir. 1955)	13
<i>Sheldon v. Sill</i> , 49 U.S. (8 How.) 441 (1850)	15
<i>Smith v. Reeves</i> , 178 U.S. 436 (1900)	21
<i>Sumitomo Shoji America, Inc. v. Avagliano</i> , 102 S. Ct. 2374 (1982)	16, 17
<i>Swain v. Pressley</i> , 430 U.S. 372 (1977)	11
<i>Trotman v. Palisades Interstate Park Comm'n</i> , 557 F.2d 35 (2d Cir. 1977)	13

TABLE OF AUTHORITIES—Continued

	Page
<i>United States v. Mississippi</i> , 380 U.S. 128 (1965) ..	22
<i>United States Steel Corp. v. Multistate Tax Comm'n</i> , 434 U.S. 452 (1978)	14
<i>United States Steel Corp. v. Multistate Tax Comm'n</i> , 367 F. Supp. 107 (S.D.N.Y. 1973), decision on merits, 417 F. Supp. 795 (1976) (3-judge court), <i>aff'd on merits</i> , 434 U.S. 452 (1978)	14
<i>Virginia v. West Virginia</i> , 206 U.S. 290 (1907)	22
<i>Virginia Electric & Power Co. v. Hampton Rede- velopment & Housing Auth.</i> , 217 Va. 30, 225 S.E.2d 364 (1976)	17
<i>West Virginia ex rel. Dyer v. Sims</i> , 341 U.S. 22 (1951)	15
<i>Wisconsin v. Pelican Ins. Co.</i> , 127 U.S. 265 (1888)	20
<i>Wolkstein v. Port of New York Auth.</i> , 178 F. Supp. 209 (D.N.J. 1959)	13

Constitutional and Statutory Material:

U.S. Const.

Art. I, § 8, cl. 9	<i>passim</i>
Art. I, § 10, cl. 3	14
Art. III	<i>passim</i>
Art. IV, § 3, cl. 2	22
Eleventh Amendment	<i>passim</i>
28 U.S.C. § 1257(3)	2
Bear River Compact, Pub. L. No. 85-348, 72 Stat. 38 (1958)	25
District of Columbia Court Reform and Criminal Procedure Act of 1970, Pub. L. No. 91-358, 84 Stat. 473	<i>passim</i>
Kansas City Area Transportation Compact (Kan- sas-Missouri), Pub. L. No. 89-599, 80 Stat. 826 (1966)	25
Klamath River Basin Compact, Pub. L. No. 85- 222, 71 Stat. 497 (1957)	25
National Capital Transportation Act of 1960, Pub. L. No. 86-669, 74 Stat. 537	3

TABLE OF AUTHORITIES—Continued

	Page
Tennessee-Missouri Bridge Commission Compact, ch. 758, 63 Stat. 930 (1949)	25
Washington Metropolitan Area Transit Authority Compact, Pub. L. No. 89-774, 80 Stat. 1324 (1966)	<i>passim</i>
Section 1(d)	16
2	16
4	4, 6, 16
5	17
78	4, 16
80	6, 18
81	<i>passim</i>
Washington Metropolitan Area Transit Regulation Compact Act, Pub. L. No. 86-794, 74 Stat. 1031 (1960)	3
Yellowstone River Compact, ch. 629, 65 Stat. 663 (1951)	25
Act of April 22, 1955, Pub. L. No. 84-24, 69 Stat. 41	3
Act of June 13, 1956, Pub. L. No. 84-573, 70 Stat. 257	3
D.C. Code Ann. § 11-321 (1967)	5
11-521 to 11-523 (1967)	5
11-961 (1967)	5
11-963 (1967)	5
11-1141 (1967)	5
1-2431 (1981)	4
11-101 (1981)	6
11-301 (1981)	6
11-921 (1981)	6
11-924 (1981)	25
Md. Code Ann. [Transportation] § 10-204 (1977) ..	4
Md. Code Ann. [Courts and Judicial Proceedings] § 4-401 (1980)	24
Va. Code Ann. § 56-529 (1981)	4
§ 16.1-77 (1982)	24

TABLE OF AUTHORITIES—Continued

Other Authorities:	Page
D. Currie, <i>Federal Courts</i> (2d ed. 1975)	23
3 J. Elliot, <i>Debates on the Federal Constitution</i> (1876)	20
Frankfurter & Landis, <i>The Compact Clause of the</i> <i>Constitution—A Study in Interstate Adjust-</i> <i>ments</i> , 34 Yale L.J. 685 (1925)	14
The Council of State Governments, <i>The Book of</i> <i>the States 1982-1983</i> (1982)	9
The Council of State Governments, <i>Interstate</i> <i>Compacts and Agencies</i> (1979 ed.)	9
<i>The Federalist</i> , No. 81 (H. Lodge ed. 1908)	20, 22

IN THE
Supreme Court of the United States

OCTOBER TERM, 1982

No. 82-

WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY, *et al.*,
v. *Petitioners*,
ROBERTO QASIM, *et al.*,
Respondents.

**PETITION FOR A WRIT OF CERTIORARI TO THE
DISTRICT OF COLUMBIA COURT OF APPEALS**

Petitioners Washington Metropolitan Area Transit Authority and WMATA employee Anthony R. Stewart pray that a writ of certiorari issue to review the judgment of the District of Columbia Court of Appeals in this matter.

OPINIONS BELOW

The Memorandum Decisions and the Judgments of the Superior Court judges of the District of Columbia are not reported, but are printed as Appendices C through H (App. 9a-14a) hereto. The decision of the District of Columbia Court of Appeals from which certiorari is sought, dated January 26, 1983, reversing and remanding all the decisions of the Superior Court judges, is not yet officially reported, and appears as Appendix B (App. 2a-8a) hereto.

JURISDICTION

The Court of Appeals' *en banc* decision and judgment herein was rendered on January 26, 1983. App. 2a. This decision disposed of six of the seven cases contained in this petition (Nos. 81-1344, 81-1616, 81-1613, 82-345, 81-1476, 82-301). On March 8, 1983, the Court of Appeals, *en banc*, entered an order *sua sponte* amending its January 26 decision and judgment to include case No. 82-56, the seventh case from which certiorari is sought. App. 19a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257 (3).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The relevant constitutional and statutory provisions are set forth as Appendix I (App. 15a *et seq.*) hereto.

STATEMENT OF THE CASE

These are seven cases—all involving The Washington Metropolitan Area Transit Authority ("WMATA" or "the Authority") and the same legal issues—which were consolidated on appeal in the District of Columbia Court of Appeals.

Plaintiffs commenced these actions against, *inter alia*, petitioner WMATA in the Superior Court of the District of Columbia. Each complaint sought money damages based on personal injuries allegedly resulting from the negligence of WMATA or its co-defendant employees. The particular facts pertinent to each plaintiff's individual claim are not relevant to the issues presented in this petition.

In the Superior Court, WMATA denied all allegations of negligence, and moved to dismiss each suit for lack of subject matter jurisdiction. These motions were based in part on the Washington Metropolitan Area Transit Authority Compact, Pub. L. No. 89-774, 80 Stat. 1324

(1966) ("the Compact" or "the WMATA Interstate Compact") and the District of Columbia Court Reform and Criminal Procedure Act of 1970, Pub. L. No. 91-358, 84 Stat. 473 (1970) ("1970 Court Reform Act").

The WMATA Interstate Compact

The WMATA Interstate Compact was the culmination of efforts by the federal government, Maryland, and Virginia to alleviate the transit problems caused by the Washington Metropolitan Area's steadily worsening traffic congestion. The solution was to develop mass transit facilities composed of an extensive regional bus and subway system.

Congress first manifested concern about the transit problems in the area in the mid-1950's, authorizing funds for a study of the transit problems and how they could be remedied. Pub. L. No. 84-24, 69 Stat. 41 (1955); Pub. L. No. 84-573, 70 Stat. 257 (1956). As the consequence of that study, Congress concluded that a regional mass transit system was both necessary and feasible, but required cooperation among the federal, state, and local governments. The National Capital Transportation Act of 1960, Title I, § 102, Pub. L. No. 86-669, 74 Stat. 537. To achieve these goals, Congress created a National Capital Transportation Agency to develop a regional mass transit system, and also authorized Maryland, Virginia, and the District of Columbia to enter into an interstate compact to carry out the mass transit system, once the system had been developed in the form of "an organization * * * perform[ing] governmental functions of a regional character, including but not limited to the provision of regional transportation facilities." Title III, § 301 (a), 74 Stat. 544.

The possibility of such a compact had already been favorably considered, and the parties reached agreement. Congress approved the compact before the year was out. The Washington Metropolitan Area Transit Regulation

Compact Act, Pub. L. No. 86-794, 74 Stat. 1031 (1960). The Regulation Compact Act performed essentially two functions. It established the Washington Metropolitan Area Transit Commission as "an instrumentality of the District of Columbia, the Commonwealth of Virginia, and the State of Maryland * * *" (Title I, Art. II, 74 Stat. 1032), and it empowered the Commission to regulate mass transit in the Washington area, in much the same manner that the Interstate Commerce Commission is empowered to regulate the trucking industry nationwide.

The final step came in 1966 with the adoption by all three jurisdictions and Congress of the WMATA Interstate Compact. Pub. L. No. 89-774, 80 Stat. 1324 (1966); D.C. Code Ann. § 1-2431 (1981); Md. Code Ann. [Transportation] § 10-204 (1977); Va. Code Ann. § 56-529 (1981). The Compact specifically made WMATA a state agency by providing in Section 4 that WMATA was created "as an instrumentality and agency of each of the signatory parties hereto" (App. 16a), and in Section 78 that WMATA was to perform "an essential governmental function." App. 16a-17a. The Compact empowered WMATA to engage in the development, finance, and operation of a regional mass transit system, and it provided in Section 81 that "[t]he United States District Courts shall have original jurisdiction, concurrent with the Courts of Maryland and Virginia, of all actions brought by or against the Authority * * *." App. 17a-18a.

The District of Columbia Court System and the 1970 Court Reform Act

At the time the Compact was enacted, the District of Columbia judicial system consisted of four local courts, exercising limited criminal and civil jurisdiction, and a normal complement of federal District Courts and a Court of Appeals. The purely local courts were the Court

of General Sessions, the Tax Court, the Juvenile Court, and the District of Columbia Court of Appeals, while the federal courts were the United States District Court and the Court of Appeals for the District of Columbia Circuit.

The primary local court, the Court of General Sessions, had only limited jurisdiction. Its criminal jurisdiction, shared concurrently with the United States District Courts, extended only over misdemeanors and petty offenses. D.C. Code Ann. § 11-963 (1967). On the civil side, its jurisdiction covered cases where the amount in controversy was \$10,000 or less, and cases involving title to real property only as part of a divorce action. *Id.* §§ 11-961, 11-1141. The decisions of the District of Columbia Court of Appeals, which heard appeals from the Court of General Sessions, were reviewed, in turn, by the United States Court of Appeals. *Id.* § 11-321.

The United States District Court possessed the same jurisdiction as any other District Court, as well as exclusive jurisdiction over all felony prosecutions (whether based upon federal or local laws) and concurrent jurisdiction over most matters handled by the Court of General Sessions. *Id.* §§ 11-521 to 11-523. The District of Columbia Circuit had its normal federal appellate jurisdiction and, as noted above, also heard appeals from the District of Columbia Court of Appeals. *See generally* *Palmore v. United States*, 411 U.S. 389, 392 n.2 (1973).

In 1970, Congress restructured the local and federal court system in the District. District of Columbia Court Reform and Criminal Procedure Act of 1970, Pub. L. No. 91-358, 84 Stat. 473. Title I combined the three local trial courts into the new Superior Court and invested this court with jurisdiction equivalent to that exercised by state trial courts in both criminal and civil matters. In particular, the Superior Courts were given civil jurisdiction over all matters in law or equity brought in the District of Columbia, except those within the exclusive

jurisdiction of the United States District Court. D.C. Code Ann. § 11-921 (1981). Review of the decisions of the District of Columbia Court of Appeals by the District of Columbia Circuit was eliminated. *Id.* § 11-301. The newly-created local court system was "established pursuant to article I of the Constitution." *Id.* § 11-101; *Palmore v. United States*, 411 U.S. at 398.

The Lower Court Proceedings

Each Superior Court judge granted WMATA's motion to dismiss for lack of subject matter jurisdiction, and issued an order to that effect. App. 9a-14a. None of the Superior Court judges issued a written opinion or statement of reasons to accompany his order.

On January 26, 1983, the District of Columbia Court of Appeals, sitting *en banc*, reversed the judgments in six of the cases consolidated on appeal. While acknowledging that "Section 4 of the Compact expressly establishes WMATA as an agency of each sovereign signatory to the Compact" (App. 4a), the court rejected WMATA's contention (and the authorities supporting that contention) that WMATA "is clothed with the sovereign immunity granted by the eleventh amendment to its parent states. *Cf. Lake Country Estates, Inc. v. Tahoe Regional Planning Agency*, 440 U.S. 391 (1979)." App. 4a.

First, the court concluded that WMATA's argument was foreclosed by *Nevada v. Hall*, 440 U.S. 410 (1979), which the Court of Appeals cited for the proposition that a sovereign could not claim immunity from suit in the courts of another sovereign. "Thus," concluded the Court of Appeals, "Maryland and Virginia do not have sovereign immunity from suits brought in the District of Columbia Courts." App. 4a. Second, the Court of Appeals interpreted Section 80 of the Compact to waive each signatory's immunity from suit in its own courts for "any proprietary functions, in accordance with the laws of the applicable signatory" (App. 4a, quoting Section 80),

which the court found included mass transportation. App. 4a-5a.

In addition, the Court of Appeals held that Section 81 of the Compact did not oust the District of Columbia local courts of jurisdiction over private tort suits, seeking monetary damages, arising out of WMATA's operation of mass transportation. Section 81, according to the Court of Appeals, simply granted jurisdiction to the federal District Courts for Maryland, Virginia, and the District of Columbia over suits brought against WMATA that did not meet the amount-in-controversy requirement for diversity jurisdiction. App. 5a. The court also refused to conclude that the omission of the then-existing Court of General Sessions (the predecessor to the Superior Court) from the Compact excepted the subject matter jurisdiction of the District's local courts. The court attributed that omission to congressional intent to expand the jurisdiction of the United States District Court for the District of Columbia, and further concluded that the 1970 Court Reform Act granted the Superior Courts jurisdiction concurrent with that of the United States District Court for the District of Columbia over all civil actions brought in the District. App. 6a-7a.¹

On March 8, the *en banc* Court of Appeals entered an order, *sua sponte*, amending its January 26 decision and judgment to add a seventh case (No. 82-56) to its decision and judgment. App. 19a.

STAGES AT WHICH THE FEDERAL QUESTIONS WERE RAISED AND PRESERVED

WMATA, in opposing the construction of the WMATA Compact adopted by the Court of Appeals before the Superior Court and the Court of Appeals, raised and argued all of the constitutional and statutory issues pre-

¹ Associate Judge Ferren filed a concurring opinion, interpreting the court's opinion as only assuming that WMATA was entitled to immunity under *Lake Country*. App. 7a-8a.

sented here (see, *e.g.*, Brief of Appellee WMATA in the Court of Appeals, pp. 3-6, 14-18), and all courts either explicitly or implicitly ruled on these issues. App. 9a-14a, 4a-7a. WMATA also raised before the Court of Appeals an objection to the jurisdiction of the Superior Court based on the Eleventh Amendment (see, *e.g.*, Brief of Appellee WMATA in the Court of Appeals, pp. 3, 7-10), and the Court of Appeals specifically ruled on this issue. App. 4a.

ARGUMENT

A. Introduction

WMATA respectfully submits that this Court should grant the writ of certiorari because the petition raises an important, and never before addressed, question regarding the applicability of the Eleventh Amendment to suits against an interstate agency brought in Article I courts by residents of the District of Columbia. This petition, furthermore, poses important issues involving the construction of an interstate compact between the States of Virginia and Maryland, as well as the District of Columbia, approved by Congress and, in pertinent part, unamended since its adoption.²

The immediate impact of the decision below will be to force WMATA to submit to thousands of similar suits in the local courts of the District of Columbia in derogation of the plain terms of the WMATA Compact and the intent of Congress and the signatory states. Literally hundreds of such lawsuits have been stayed pending the outcome of these cases, and the decision below, if left standing, will pave the way for a limitless number of future suits against WMATA. And all this will come about despite the understanding of the signatories to the WMATA

² Because of Congress' adoption of the WMATA Interstate Compact as a law of the United States, construction of the Compact presents a federal question. *E.g.*, *Cuyler v. Adams*, 449 U.S. 433, 438 & n.7 (1981), and cases cited therein.

Interstate Compact, expressed in Section 81, that no suit could be brought against WMATA in the local courts of the District of Columbia. The decision below produces a result at odds with the reasons why the signatories chose to deny the local District of Columbia courts jurisdiction to entertain suits such as these. A reversal of the decision below will ensure that suits are brought before the tribunals identified in Section 81 of the Compact.

The WMATA Interstate Compact, furthermore, is not an isolated example of this type of interstate cooperation. Interstate compacts, described by the States themselves as "[t]he most binding legal instrument to establish formal cooperation among states * * *," have become increasingly commonplace as a means of facilitating intergovernmental cooperation in a myriad of areas since their birth in the early days of the Republic. The Council of State Governments, *Interstate Compacts and Agencies*, p. vii (1979 ed.) ; The Council of State Government, *The Book of the States 1982-1983*, pp. 15-18 (1982). Over 170 such compacts now exist (*id.* p. 18), with over 50 attendant interstate agencies having been created under these agreements. *Interstate Compacts and Agencies*, pp. 2-32. Each state is a partner to at least 10 compacts (*id.* pp. 35-43), and the District of Columbia belongs to 9 (excluding boundary agreements). *Id.* pp. 43-44. As independent sovereigns, the signatories to these compacts are vitally interested in ensuring that the terms of these agreements are faithfully observed, whether by the other signatories or by the courts. The decision below, which ignored the plain terms of the WMATA Interstate Compact, fails to heed the sovereign interests that these agreements represent.

But the impact of the decision below is also not limited to the WMATA Interstate Compact or to interstate compacts in general. In ruling that Maryland, Virginia, and WMATA can be sued in the District of Columbia, notwithstanding the immunity granted these States and

WMATA by the Eleventh Amendment, the court below addressed an issue never before considered by this Court regarding the applicability of the Eleventh Amendment to suits against an interstate agency brought in the District of Columbia. Only a few Terms ago, this Court held that the Eleventh Amendment, which is unquestionably applicable to Article III courts, is, at the same time, inapplicable to state courts. *Nevada v. Hall*, 440 U.S. at 418-421. The question presented here, then, is the logical successor to the one addressed in *Hall* because the District of Columbia courts are neither Article III courts nor state courts, but are federal Article I courts created by Congress under its authority to legislate for the District of Columbia.

To that extent, then, the statutory and constitutional questions presented here are ones that can only be resolved by this Court. The District of Columbia enjoys a unique position in our federal structure, possessing some of the characteristics of both the federal and state governments but without all the attributes of either. Inevitably, therefore, the applicability of federal legislation and constitutional provisions to the District has generated a substantial number of questions which this Court has recognized that only it can finally decide.³ Chief among these are those questions regarding the distribution of

³ *E.g.*, *Key v. Doyle*, 434 U.S. 59 (1977) (appealability of decisions from District of Columbia Court of Appeals); *Pernell v. Southall Realty*, 416 U.S. 363 (1974) (applicability of Seventh Amendment to cases brought in Superior Courts involving realty); *District of Columbia v. Carter*, 409 U.S. 418 (1973) (applicability of 42 U.S.C. § 1983 to District); *Bolling v. Sharpe*, 347 U.S. 497 (1954) (applicability of *Brown v. Board of Educ.*, 347 U.S. 483 (1954), to District); *Hurd v. Hodge*, 334 U.S. 24 (1948) (applicability of 42 U.S.C. § 1982 to District); *Geofroy v. Riggs*, 133 U.S. 258 (1890) (applicability of treaty with France to District); *Callan v. Wilson*, 127 U.S. 540 (1888) (applicability of jury trial guarantee of Art. III, § 2, cl. 3, and Sixth Amendment to District); *Hepburn v. Ellzey*, 6 U.S. (2 Cranch) 445 (1805) (applicability of diversity jurisdiction of Art. III, § 2, cl. 1, to District).

authority between the courts of the United States and the local courts for the District.⁴

Of even greater importance, however, is the fact that the court below held that the States, their officers, and their agencies, whether acting in an interstate or intrastate capacity, are not entitled to invoke the Eleventh Amendment simply because they were sued in a court created by Congress under its Article I rather than its Article III authority. Accordingly, the decision below implicates the interests not only of the two state signatories to the WMATA Compact—Virginia and Maryland—but also of every other State, because all are potentially subject to the reach of an Article I court. This reach is defined either along geographic lines, as in the District, or in subject matter terms, as were the bankruptcy courts mooted last Term in *Northern Pipeline Construction Co. v. Marathon Pipeline Co.*, 102 S. Ct. 2858 (1982). Review by this Court is thus necessary to prevent atrophy of the Eleventh Amendment.

Review would therefore be warranted even if the decision below were correct, a conclusion that we will now demonstrate is not supported by this Court's decisions.

B. The Eleventh Amendment

1. The Court of Appeals correctly recognized the principle that an interstate agency, like WMATA, is entitled to claim the immunity from suit guaranteed wholly intrastate agencies by the Eleventh Amendment. Even though the full Court has never definitively ruled on this issue, three Justices have expressly concluded that an interstate

⁴ *E.g.*, *Feldman v. Gardner*, 661 F.2d 1295 (D.C. Cir. 1981), cert. granted sub nom. *District of Columbia Court of Appeals v. Feldman*, No. 81-1335 (June 28, 1982) (District Court of Appeals' authority exclusively to regulate District bar); *Swain v. Pressley*, 430 U.S. 372 (1977) (habeas corpus jurisdiction of courts in the District); *Palmore v. United States*, supra, authority of courts in the District to entertain criminal prosecutions).

agency is immune from suit in the federal courts. *Petty v. Tennessee-Missouri Bridge Comm'n*, 359 U.S. 275, 283-289 (1959) (Frankfurter, Harlan, & Whittaker, JJ., dissenting).⁵ And only a few Terms ago, this Court clearly implied that a properly-established and congressionally-approved interstate agency would be entitled to invoke the Eleventh Amendment. *Lake Country*, 440 U.S. at 401.⁶

The federal Courts of Appeals furthermore have uniformly recognized that the States are fully entitled to create, by interstate compact, a multistate agency en-

⁵ In *Petty*, three Justices wrote approvingly of a State's right to limit its amenability to suit in federal or state court, in general or for particular purposes (359 U.S. at 276-277; opinion for the court by Douglas, J., joined by Warren, C.J., & Brennan, J.), and assumed that the compacting States could also do so by an interstate agreement (*id.* at 279), but concluded that the States involved there had in the compact waived their immunity. *Id.* at 279-283. Three Justices concurred only in the majority's conclusion that the States had waived their immunity, but did so without questioning the States' right to withhold such consent. *Id.* at 283 (Black, Clark & Stewart, JJ., concurring in the judgment). And, as noted above, three Justices both expressly recognized the States' right to create an interstate agency immune from suit in the federal courts and dissented from the majority's conclusion that the States involved had waived that immunity. *Id.* at 283-289 (Frankfurter, Harlan, & Whittaker, JJ., dissenting).

⁶ The Court said:

If an interstate compact discloses that the compacting States created an agency comparable to a county or municipality, which has no Eleventh Amendment immunity, the Amendment should not be construed to immunize such an entity. *Unless there is good reason to believe that the States structured the new agency to enable it to enjoy the special constitutional protection of the States themselves, and that Congress concurred in that purpose*, there would appear to be no justification for reading additional meaning into the limited language of the Amendment. [Emphasis added.]

Six members of the Court joined this statement. Justice Brennan said he would not reach the issue (440 U.S. at 406), and Justices Marshall and Blackmun dissented on other grounds. *Id.*

joying the immunity from suit under the Eleventh Amendment that an agency of any one of the signatories would enjoy. Thus, the Eighth, Second, and Ninth Circuits have squarely held that an interstate agency may invoke the Eleventh Amendment.⁷ As the Second Circuit has noted, "[w]e fail to perceive any reason why a bi-state commission cannot, when sued in the federal court[s], enjoy the Eleventh Amendment immunity of its signatory states." *Trotman*, 557 F.2d at 38.⁸ The federal District Courts that have ruled on this issue have also concluded that a genuine interstate agency may invoke the Eleventh Amendment.⁹ In short, every federal

⁷ *Council of Commuter Org. v. Metropolitan Transp. Auth.*, 683 F.2d 663, 672 (2d Cir. 1982), *aff'd*, 515 F. Supp. 36, 37-38 (S.D.N.Y. 1981); *Jacobson v. Tahoe Regional Planning Agency*, 566 F.2d 1353, 1359-60 (9th Cir. 1977), *rev'd on other grounds sub nom. Lake Country Estates, Inc. v. Tahoe Regional Planning Agency*, 440 U.S. 391 (1979); *Trotman v. Palisades Interstate Park Comm'n*, 557 F.2d 35, 37-38 (2d Cir. 1977); *Petty v. Tennessee-Missouri Bridge Comm'n*, 254 F.2d 857, 859-860 (8th Cir. 1958), *rev'd on other grounds*, 359 U.S. 275 (1959). See also *Ladue Local Lines, Inc. v. Bi-State Development Agency of the Missouri-Illinois Metropolitan Dist.*, 433 F.2d 131, 136-137 (8th Cir. 1970) (interstate agency immune from federal antitrust laws).

⁸ While this Court reversed the Courts of Appeals in *Petty* and *Lake Country*, in each case the Court did so on other grounds, and in neither case did this Court question the States' ability to fashion immunity for a genuine interstate agency if clearly adopted as part of a compact and approved by Congress. *Petty* and *Lake Country* are discussed in notes 5 & 6, respectively, *supra*.

⁹ *Council of Commuter Org. v. Metropolitan Transp. Auth.*, 515 F. Supp. 36, 37-38 (S.D.N.Y. 1981), *aff'd*, 683 F.2d 663, 672 (2d Cir. 1982); *Wolkstein v. Port of New York Auth.*, 178 F. Supp. 209, 213-214 (D.N.J. 1959); *Petty v. Tennessee-Missouri Bridge Comm'n*, 153 F. Supp. 512, 513 (E.D. Mo. 1957), *aff'd*, 254 F.2d 857 859-860 (8th Cir. 1958), *rev'd on other grounds*, 359 U.S. 275 (1959); *Howell v. Port of New York Auth.*, 34 F. Supp. 797, 801 (D.N.J. 1940); see also *Rao v. Port of New York Auth.*, 122 F. Supp. 595, 597 (E.D.N.Y. 1954), *aff'd*, 222 F.2d 362, 363 (2d Cir. 1955). Compare *Kozikowski v. Delaware River Port Auth.*, 397 F. Supp.

court that has considered this issue has ruled that an interstate agency may invoke the Eleventh Amendment's immunity where the founding interstate compact so provides.

This conclusion is fully consistent with this Court's interpretation of the purposes served by the Compact Clause: the prevention of the enhancement of state power at the expense of federal authority. *See, e.g., Cuyler v. Adams*, 449 U.S. at 439-440; *United States Steel Corp. v. Multistate Tax Comm'n*, 434 U.S. 452, 459-460, 471-472 (1978); *New Hampshire v. Maine*, 426 U.S. 363, 369-370 (1976). There is no threat to federal supremacy (or to other States) where, as here, the interstate agency granted immunity has been approved in that form by Congress. On the other hand, a constitutional rule preventing the States from creating such an agency may impede efforts at interstate cooperation in matters of regional concern.

Complex problems often fail to respect state lines. Matters such as waste disposal and transportation, to name but two, can often be handled successfully only through interstate cooperation. Interstate compacts are expressly contemplated by Article I, § 10, cl. 3, of the Constitution, and "perform[] high functions in our federalism, including the operation of vast interstate enterprises." *Petty*, 359 U.S. at 279; footnotes omitted. *See generally* Frankfurter & Landis, *The Compact Clause of the Constitution—A Study in Interstate Adjustments*, 34

1115, 1119-20 (D.N.J. 1975) (finding that particular interstate agency had waived immunity); *Byram River v. Village of Port Chester*, 394 F. Supp. 618, 627-628 (S.D.N.Y. 1975) (finding that particular interstate agency not entitled under compact to claim immunity); *United States Steel Corp. v. Multistate Tax Comm'n*, 367 F. Supp. 107, 113-115 (S.D.N.Y. 1973) (relying upon *Ex parte Young*, 209 U.S. 123 (1908) to hold that interstate agency not entitled to claim immunity where plaintiff presents federal constitutional claim), *decision on merits*, 417 F. Supp. 795 (1976) (3-judge court), *aff'd on merits*, 434 U.S. 452 (1978).

Yale L.J. 685 (1925). Indeed, this Court on more than one occasion has recommended that the States turn to interstate compacts to resolve regional problems. *See, e.g., West Virginia ex rel. Dyer v. Sims*, 341 U.S. 22, 27 (1951); *New York v. New Jersey*, 256 U.S. 296, 313 (1921). While there may be little reason to permit two States by compact to bestow immunity upon a political subdivision of both that simply spans state lines, as *Lake Country* noted, there is no reason to handicap the States by denying them immunity simply because they have joined forces to address a legitimate concern of each State which, if the concern of only one, would not have required a waiver of immunity.

Finally, this conclusion is also consistent with the Eleventh Amendment, the sovereign immunity of the federal government, and Congress' authority under Articles I and III to regulate the jurisdiction of the federal courts. By its terms, the Eleventh Amendment bars suit against a State in any federal court, including this Court. *E.g., Duhne v. New Jersey*, 251 U.S. 311, 313 (1920). It is also well settled that the United States, its officers, and agencies may not be sued without the consent of the federal government. *E.g., Malone v. Bowdoin*, 369 U.S. 643 (1962); *Larson v. Domestic & Foreign Corp.*, 337 U.S. 682 (1949). And it is axiomatic that Congress could decline to authorize the lower federal courts to entertain suit, or to order relief, of any type against the States or the federal government. *E.g., Sheldon v. Sill*, 49 U.S. (8 How.) 441, 448-449 (1850); *Cary v. Curtis*, 44 U.S. (3 How.) 236, 245 (1845). Because the States and federal government could separately create agencies immune from suit, and because Congress could refuse to abrogate the States' or federal government's immunity from suit in the federal courts altogether, an agreement between the States and Congress to grant such immunity to an interstate agency should be unquestionable.

2. The Court of Appeals also correctly recognized (App. 4a) that, in this case, there is the "good reason"

found lacking in *Lake Country* to believe that WMATA may legitimately claim such immunity. Because the WMATA Interstate Compact is an agreement between independent sovereigns, the text of the Compact itself must be the first, and most important, source of its meaning. See *Delaware River Joint Toll Bridge Comm'n v. Colburn*, 310 U.S. 419, 428-431 (1940) (interstate compact); cf. *Sumitomo Shoji America, Inc. v. Avagliano*, 102 S. Ct. 2374, 2377 (1982) (international treaty). The text of the WMATA Interstate Compact, like the text of the Transportation Act and Regulation Compact, specifically established WMATA as an interstate agency. Section 2 of the Compact identifies the purpose of the Compact as being, in part, the "creat[ion] [of] a regional instrumentality, as a common agency of each signatory party * * *", empowered to develop, finance, and operate a regional mass transit system. App. 15a-16a. Furthermore, as the Court of Appeals held (App. 4a), Section 4 of the Compact expressly creates the WMATA "as an instrumentality and agency of each of the signatory parties hereto * * *." App. 16a.¹⁰ In addition, Section 78 acknowledges that "the creation * * * and the carrying out" of WMATA's purposes are "in all respects for the benefit of the people of the signatory states * * *," they are "for a public purpose * * *," and WMATA "will be performing an essential governmental function, including, without limitation, proprietary, governmental, and other functions * * *." App. 16a-17a. Finally, the text of the Compact clearly distinguishes between an "agency" and a "political subdivision," separately referring to these different instrumentalities over a dozen times.¹¹

¹⁰ Section 1(d) of the Compact defines "'Signatory'" as "the State of Maryland, the Commonwealth of Virginia and the District of Columbia."

¹¹ Section 3 uses the term "political subdivision" to refer to Arlington and Fairfax Counties in Virginia, and to Montgomery and Prince George's Counties in Maryland. Thereafter, references to a "political subdivision" are frequently contrasted with refer-

The plain meaning of the text is confirmed by the construction given the Compact by its signatories. Decisions of the Virginia Supreme Court and the lower federal courts for Maryland and the District of Columbia have recognized WMATA as an arm of its signatories.¹² In the absence of any contrary indication in the legislative history, the plain meaning and construction by the signatories should control. *Cf. Avagliano*, 102 S. Ct. at 2380.

Furthermore, collateral evidence also supports this conclusion. WMATA is headed by directors appointed by the District of Columbia and state agencies from Maryland and Virginia. WMATA Compact § 5. Sovereign immunity is well-established in Maryland and Virginia.¹³ Both States and their agencies enjoy absolute immunity from suit for money damages.¹⁴ A state agency in each State is immune from any tort liability unless the State expressly waives its immunity; waiver will not be implied.¹⁵

ences to an "agency," which is used to refer to state agencies in Maryland and Virginia. See Sections 12(e); 12(f); 12(h); 13(b); 14(a)(3); 14(c)(1) & (2); 20(a); 21; 29; 41; 62(b); 69(b); 70(a); 73(a); 75; 76; 82(a).

¹² *Potomac Electric Power Co. v. State Corp. Comm'n*, 221 Va. 632, 634-636, 272 S.E.2d 214, 215-216 (1980); *Board of Supervisors v. Massey*, 210 Va. 253, 254, 262, 169 S.E.2d 556, 557, 562 (1969); *City of Fairfax v. WMATA*, 582 F.2d 1321, 1323, 1329 (4th Cir. 1978), cert. denied, 440 U.S. 914 (1979); *C. T. Hellmuth & Assoc., Inc. v. WMATA*, 414 F. Supp. 408, 409 (D. Md. 1976); *Birnberg v. WMATA*, 389 F. Supp. 340, 342 (D.D.C. 1975).

¹³ See, e.g., *Austin v. City of Baltimore*, 286 Md. 51, 53, 405 A.2d 255, 256 (1979); *Virginia Electric & Power Co. v. Hampton Redevelopment & Housing Auth.*, 217 Va. 30, 32-33, 225 S.E.2d 364, 367 (1976).

¹⁴ See, e.g., *Katz v. Washington Suburban Sanitary Comm'n*, 284 Md. 503, 508 n.3, 397 A.2d 1027, 1030 n.3 (1979); *Virginia Electric & Power Co.*, 217 Va. 30, 225 S.E.2d 364.

¹⁵ See, e.g., *Board of Trustees of Howard College v. John K. Ruff, Inc.*, 278 Md. 580, 588-589, 366 A.2d 360, 364-365 (1976); *Katz*, 284 Md. at 508-509, 397 A.2d at 1030; *Elizabeth River Tunnel Dist. v. Beecher*, 202 Va. 452, 456-457, 117 S.E.2d 685, 689 (1961).

The WMATA Compact retained this complete immunity for all governmental actions performed by WMATA, waiving immunity only for proprietary actions. WMATA Compact § 80; App. 17a. Absent this limited waiver, the Compact therefore grants WMATA the same sovereign immunity that the agencies of each signatory enjoys. Moreover, WMATA receives funding from the federal government, state agencies in Maryland and Virginia, and the localities served by WMATA. This Compact therefore also exhibits the collateral elements of intent found lacking in *Lake Country*, 440 U.S. at 401-402.

As sovereigns entitled to invoke the immunity from suit guaranteed by the Eleventh Amendment as well as by their own doctrines of sovereign immunity, Maryland and Virginia were well within their right, in creating WMATA, to specify the courts, if any, in which WMATA could be sued. The signatories permitted suit in the federal District Courts for Maryland, Virginia, and the District, as well as in state courts in Maryland and Virginia, and also provided for the right to remove any case filed in state court to the appropriate federal court. By so doing, the signatories were able to avoid the possibility that WMATA would be subject to prejudice by virtue of its status. Because Maryland and Virginia were both signatories, permitting WMATA to be sued in state court did not pose the likelihood that suits against WMATA would be perceived as concerning only another sovereign. To avoid that concern completely, the opportunity to remove a suit from state to federal court was added, as was the right to bring suit in any one of the applicable federal courts.

But the District of Columbia in 1966 was governed by Congress, not the States. If WMATA could be sued in the District, it would not be protected by having the suit tried either in the courts of one of the state signatories or before federal judges, free from influence by Congress. Instead, WMATA would be subject to suit in courts and before judges entirely subject to congressional control.

Hence, viewed in its historical context, excluding the local courts of the District makes eminent sense.

3. Nonetheless, the court below felt compelled to deny WMATA immunity from suit because of *Nevada v. Hall*, 440 U.S. 410. App. 4a. In so concluding, however, the court below misapplied that decision and thereby produced an altogether anomalous result.

The issue presented in *Hall* was whether, absent an interstate agreement or federal law to the contrary (*id.* at 414 n.5), "a State may claim immunity from suit in the courts of *another State* * * *" (*id.* at 414; emphasis added), a question this Court answered in the negative. *Hall* simply recognized that Article III did not disturb the relationship of sovereign independence that the States enjoyed *inter se* prior to the adoption of the Constitution, and that neither *Chisholm v. Georgia*, 2 U.S. (2 Dall.) 419 (1793), nor the Eleventh Amendment was concerned with such matters. 440 U.S. at 418-421. But that answer does not control this case because "[t]he District of Columbia is constitutionally distinct from the States * * *" (*Palmore v. United States*, 411 U.S. at 395) and is, instead, subject to the plenary control of the federal government.¹⁶ Neither *Nevada v. Hall* nor any other decision of this Court has ever considered the question pre-

¹⁶ Most of the plaintiffs in the seven cases decided by the court below were residents of the District of Columbia. *E.g.*, Complaint in *Carter v. WMATA*, CA No. 8418-77 (D.C. Super. Ct. 1977) p. 1. In two cases, however, the plaintiff was a resident of Maryland. *E.g.*, Complaint in *Artis v. WMATA*, CA No. 13485-79 (D.C. Super. Ct. 1979) p. 1. It would, of course, be anomalous to hold that the Eleventh Amendment barred suit against WMATA if brought by a resident of a State but did not bar suit if brought by a resident of the District of Columbia.

Moreover, there is in this case, unlike *Hall*, a "federal statute" (440 U.S. at 414 n.5) limiting the jurisdiction of the local District of Columbia courts, in addition to the Eleventh Amendment: the WMATA Interstate Compact, discussed at pp. 24-28, *infra*.

sented here. But history, this Court's prior decisions, and reason support an affirmative answer.

a. The Framers of Article III and the Eleventh Amendment were evidently concerned with insuring that the States, where they could be sued in federal court at all, could only be sued before a tribunal bearing the constitutionally recognized guarantees of judicial impartiality.

Framers of the Constitution such as James Madison, John Marshall, and Alexander Hamilton interpreted Article III as retaining a State's immunity from suit by private parties in federal courts. *The Federalist*, No. 81, p. 508 (A. Hamilton) (H. Lodge ed. 1908); 3. J. Elliot, *Debates on the Federal Constitution*, p. 533 (1876) (James Madison); *id.* at pp. 555-556 (John Marshall); *see Nevada v. Hall*, 440 U.S. at 419 & n.16; *id.* at 435-436 & n.3 (Rehnquist, J., joined by Burger, C.J., dissenting). At the same time, Framers such as Edmund Randolph and James Wilson believed that Article III, § 2, cl. 1, granted the federal courts jurisdiction over "Controversies * * * between a State and citizens of another State" to insure that disputes involving the States could be resolved before a tribunal whose impartiality was guaranteed by the life tenure and irreducible compensation provisions of Article III. *North Dakota v. Minnesota*, 263 U.S. 365, 372-373 (1923); *Wisconsin v. Pelican Ins. Co.*, 127 U.S. 265, 289 (1888). *See also The Federalist*, *supra*, No. 81, pp. 507-508 (A. Hamilton). The Hamiltonian position, though initially rejected in *Chisholm*, was ultimately vindicated with the adoption of the Eleventh Amendment.

No one suggested several decades prior to the first decision upholding Congress' creation of an Article I court—*American Ins. Co. v. Canter*, 26 U.S. (1 Pet.) 511 (1828)—that different principles would apply to those courts. It is unquestionable, therefore, that the Framers of both Article III and the Eleventh Amendment would have found quite curious the notion that Article I left

Congress with a mechanism for out-flanking their obvious designs.

b. Several decisions of this Court compel the conclusion that a resident of the District of Columbia may not circumvent a State's Eleventh Amendment immunity by the simple expedient of bringing suit in an Article I court.

This Court has not given a crimped, literalistic interpretation to the Eleventh Amendment, but has repeatedly interpreted its scope in light of its underlying principles that a "state's *freedom from litigation* was established as a constitutional right through the Eleventh Amendment" (*Great Northern Life Ins. Co. v. Read*, 322 U.S. 47, 51 (1944); emphasis added), and that, absent consent, a State "cannot be sued *in any court*, by any person, for any cause of action whatever." *Hopkins v. Clemson Agric. College*, 221 U.S. 636, 642 (1911); emphasis added. On the one hand, in *Hans v. Louisiana*, 134 U.S. 1 (1890) (suit by state citizen), *Smith v. Reeves*, 178 U.S. 436 (1900) (suit by a federally-chartered corporation), and *Monaco v. Mississippi*, 292 U.S. 313 (1934) (suit by a foreign nation), this Court flatly rejected the notion that the Framers of the Eleventh Amendment would have acquiesced in a suit brought against a State by a party not specifically identified in the text of the Amendment.¹⁷ "It is an attempt to strain the Constitution and the law to a construction never imagined or dreamed of." *Hans*, 134 U.S. at 15 (*quoted in Smith*, 178 U.S. at 447, and in *Monaco*, 292 U.S. at 326).¹⁸ On the other hand, this

¹⁷ The Amendment also bars suit brought against a state officer or agency (*Cory v. White*, 102 S. Ct. 2325 (1982); *Alabama v. Pugh*, 438 U.S. 781 (1978)), notwithstanding the textual limitation to suits "commenced or prosecuted against *one of the United States* * * *," and the Amendment bars suits in admiralty against a State (*In re New York*, 256 U.S. 490 (1921)), notwithstanding the textual limitation to "any suit in *law or equity* * * *."

¹⁸ *Hans* then continued, as also quoted in *Smith* and *Monaco*:

Can we suppose that, when the Eleventh Amendment was adopted, it was understood to be left open for citizens of a

Court's respect for the principle of sovereign immunity has not been limited to suits against States in Article III courts. In *Kawananakoa v. Polyblank*, 205 U.S. 349 (1907), and *Porto Rico v. Castillo*, 227 U.S. 270 (1913), this Court held that territorial governments were entitled to invoke sovereign immunity when sued in territorial courts created by Congress under Article IV, § 3, cl. 2. In light of these decisions, the anomaly created by the decision below is manifest.

That decision also conflicts with this Court's requirement of a clear, unambiguous statement of congressional intent to abrogate a State's immunity. *Fitzpatrick v. Bitzer*, 427 U.S. 445 (1976); *Edelman v. Jordan*, 415 U.S. 651 (1974); *Employees v. Department of Public Health & Welfare*, 411 U.S. 279 (1973); *Parden v. Terminal Ry.*, 377 U.S. 184 (1964). Such a clear statement is especially necessary in a case such as this where the legislation allegedly doing so is enacted *after* the interstate agency has been created *with congressional assent*. Congress' subsequent decision to establish Article I courts for the District does not, by that fact alone, suggest an accompanying intent to force the States to stand as defendants in those courts. Absent specific congressional

State to sue their own State in the Federal courts, whilst the idea of suits by citizens of other States, or of foreign States, was indignantly repelled? Suppose that Congress, when proposing the Eleventh Amendment, had appended it to a proviso that nothing therein contained should prevent a State from being sued by its own citizens in cases arising under the Constitution or laws of the United States, can we imagine that it would have been adopted by the States? The supposition that it would is almost an absurdity on its face. [134 U.S. at 15.]

The only exceptions to the rule that the Eleventh Amendment bars *any* plaintiff from suing a State in a federal court are those "where there has been 'a surrender of this immunity in the plan of the [constitutional] convention'" (*Monaco*, 292 U.S. at 322-323 (quoting *The Federalist*, No. 81, p. 487 (A. Hamilton))), as where the plaintiff is another State (*e.g.*, *Virginia v. West Virginia*, 206 U.S. 290, 319 (1907)) or the United States. *United States v. Mississippi*, 380 U.S. 128, 140-141 (1965).

legislation clearly abrogating a State's immunity, or a State's voluntary waiver—neither of which is present here—the Eleventh Amendment should limit the authority of those courts to entertain such suits, regardless of the breadth of authority such a court may, constitutionally, otherwise enjoy.

c. Finally, denying the States immunity from suit in Article I courts is wholly unreasonable. As Professor David Currie has pointedly asked, “do you really believe the storm over *Chisholm v. Georgia* was over so trivial a matter as the choice of forum?” D. Currie, *Federal Courts*, p. 573 (2d ed. 1975). The Eleventh Amendment granted the States immunity from suit at the hands of Article III courts—the only federal courts contemplated by the Framers—because of the States’ concern with their sovereign immunity and the authority of federal courts. The same concerns are applicable to Article I courts, like those in the District. But of additional importance is that Article I courts are subject to congressional control, as Article III courts are not. Because the Framers of the Eleventh Amendment would have been doubly concerned with courts of this character, the conclusion that they would have considered Article I courts within the scope of “the Judicial Power” restrained by the Eleventh Amendment is ineluctable.

4. It is also quite clear that WMATA has never waived its immunity, and that Congress has never adopted legislation clearly abrogating WMATA's immunity. The text of Section 81 of the Compact specifically omits the local courts of the District from those given subject matter jurisdiction over tort suits against WMATA. App. 18a. Unlike the clause considered in the leading case on an interstate agency's waiver of its immunity, *Petty v. Tennessee-Missouri Bridge Comm'n*, *supra*, whose terms authorized suit in “any court * * * of the United States” (359 U.S. at 281; emphasis added), the WMATA Interstate Compact limited WMATA's ability to be sued to

specific courts, a practice *Petty* noted with approval. *Id.* at 276-277. See also *Kennecott Copper Corp. v. State Tax Comm'n*, 327 U.S. 573, 579 (1946); *Ford Motor Co. v. Department of Treasury*, 323 U.S. 459, 465 (1945). The Compact therefore supports WMATA's claim of immunity from suit.

C. The WMATA Interstate Compact

The foregoing discussion makes plain why the signatories to the WMATA Compact would have intended to exclude the local District of Columbia courts from those granted subject matter jurisdiction by the Compact, and also heightens the need to analyze with care the provisions of that Compact authorizing suit, a step that the court below failed to take.

1. The court below fastened upon Section 81's failure to use the term "exclusive" in its grant of jurisdiction. App. 5a-6a. But in so doing, the court missed the obvious import of the specific reference in Section 81 to five of the six potential courts. Section 81 not only authorized suit without any restriction in the United States District Courts for Maryland, Virginia, and the District, but also authorized suit in *all* the "Courts of Maryland and Virginia," some of which, like the Court of General Sessions in the District, also had monetary ceilings on their jurisdiction. See Md. Code Ann. [Courts and Judicial Proceedings] § 4-401 (1980) (Maryland District Court); Va. Code Ann. § 16.1-77 (1982) (Virginia General District Court). Section 81, therefore, clearly modified the jurisdictional rules for *five* of the *six* applicable courts, granting them jurisdiction to entertain suits like these. Had the signatories also intended to permit suit in the District of Columbia Court of General Sessions, it would have been easy to do so. By specifying the particular courts in which WMATA could be sued, without regard to the amount in controversy or any other jurisdictional requirements, Section 81 necessarily barred any other courts from exercising subject matter jurisdiction over

WMATA. Accordingly, the signatories' failure to add the term "exclusive" to Section 81 is of no moment.

Indeed, by basing its interpretation of Section 81 upon language that does *not* appear in that provision, rather than upon the language that does, the court below effectively rewrote the Compact to authorize suit against WMATA in *any* court. Not only does that construction render superfluous the specific enumeration of five of the six potential courts, but it is also at odds with Congress' settled practice of explicitly authorizing suit against an interstate agency in "any court" when Congress so intends.¹⁹ The misinterpretation of Section 81 by the court below is therefore manifest.

2. Because the WMATA Interstate Compact excluded the local District of Columbia courts from those otherwise given subject matter jurisdiction, the only remaining question should be whether the 1970 Court Reform Act modified the terms of the Compact. That it did not, either explicitly or implicitly, is true for several reasons.

First, neither the text nor the legislative history of the Act mentions the WMATA Interstate Compact. The only reference to WMATA is found in D.C. Code Ann. § 11-924 (1981), which simply gives the Superior Courts *criminal* jurisdiction over persons who violate WMATA's Rules and Regulations. *Compare* *Hubbell v. United*

¹⁹ See Kansas City Area Transportation Compact (Kansas-Missouri), § 2(b), Pub. L. No. 89-599, 80 Stat. 826, 829 (1966) ("any court * * * of the United States"); Bear River Compact, Art. III(C)(4), Pub. L. No. 85-348, 72 Stat. 38, 41 (1958) ("[s]ue and be sued * * * in any court of record of a signatory State, and in any court of the United States having jurisdiction of such action"); Tennessee-Missouri Bridge Commission Compact, ch. 758, 63 Stat. 930 (1949) ("any court * * * of the United States"; discussed in *Petty, supra*). See also Klamath River Basin Compact, Art. XII(B), Pub. L. No. 85-222, 71 Stat. 497, 506 (1957) (authorizing signatory States to sue "in any court of competent jurisdiction"); Yellowstone River Compact, Art. XIII, ch. 629, 65 Stat. 663, 669 (1951) (same for "any Federal court or the United States Supreme Court").

States, 289 A.2d 879 (D.C. 1972), with *District of Columbia v. Solomon*, 275 A.2d 204 (D.C. 1971). By this section, Congress demonstrated that it was well aware of WMATA's unique status when it considered and passed the 1970 Court Reform Act and knew how to refer specifically to WMATA when it wished to do so. And by providing for only criminal jurisdiction, Congress necessarily excluded civil jurisdiction.

Second, when Congress intended to transfer jurisdiction from the United States District Courts to the Superior Courts, Congress manifested that intent explicitly, not leaving its intent to inference or implication. Thirty-three provisions of the Court Reform Act, Sections 141 through 173, contain conforming amendments, modifying the District and federal codes by adding the term "Superior Court" and expressly endowing that court with jurisdiction. 84 Stat. 551-592; *see* Addendum to Brief for Appellee WMATA in the Court of Appeals, pp. 37-78. Many of these provisions expressly transfer jurisdiction from the United States District Court to the Superior Courts.²⁰ But the Court Reform Act nowhere mentions the WMATA Compact. In fact, the Court Reform Act expressly reserved for the federal courts those matters in which the federal courts had exclusive jurisdiction. *See* D.C. Code Ann. § 11-921. Because Section 81 of the Compact so invested the federal courts, the Act, by its terms, carried through the effect of Section 81.

Finally, suits involving WMATA were not of the type that Congress intended to transfer from the federal to the local courts. As we have shown, Maryland and Virginia were well within their office in specifying in which courts,

²⁰ For example, Section 155(c) lists 55 acts in the District Code in which "Superior Court" is substituted for the "United States Court." Section 157, entitled "Miscellaneous Amendments Relating to Transfers of Jurisdiction," lists 8 separate acts for which jurisdiction is transferred from the federal to the local courts.

if any, this agency would be subject to suit. Nothing in the legislative history of the Act suggests, much less stands as the clear statement this Court has required in other circumstances (e.g., *Edelman v. Jordan*, *supra*), that, by reorganizing the local court system, Congress also intended to exercise its authority to modify the handiwork of the States of Maryland and Virginia. Thus, there is no reason to conclude that Congress intended to modify the WMATA Interstate Compact.

If the Court Reform Act did not expressly repeal the jurisdictional limits established in WMATA Compact Section 81, neither did it do so by implication. As a general rule, "repeals by implication are not favored" (*Posadas v. National City Bank*, 296 U.S. 497, 503 (1936)), and "[i]n the absence of some affirmative showing of an intention to repeal, the only permissible justification for a repeal by implication is when the earlier and later statutes are irreconcilable." *Morton v. Mancari*, 417 U.S. 535, 550 (1974). The Court Reform Act is readily reconcilable with—indeed, is best read as being wholly consistent with—Section 81 of the Compact. The Court Reform Act therefore cannot be read as repealing Section 81 by implication.

There is one final point. The WMATA Interstate Compact was solemnly entered into by two sovereign States, the District of Columbia, and Congress. Even if Congress has the constitutional *power* subsequently to change such a Compact without the concurrence of the signatory States, such a change should not lightly be inferred—in fact, should not be *inferred* at all.²¹ Maryland and Vir-

²¹ Cf. *Pennhurst State School & Hospital v. Halderman*, 451 U.S. 1, 17 (1981) ("if Congress intends to impose a condition on the grant of federal moneys, it must do so unambiguously" for "[b]y insisting that Congress speak with a clear voice, we enable the States to exercise their choice [of participating in a federally funded program] knowingly, cognizant of the consequences of their participation"; relying upon *Edelman*, *supra*, and *Employees*, *supra*;

ginia approved the Compact based on the plain meaning of its terms. The question of which courts would be adjudicating disputes under the Compact undoubtedly was a serious one for them in their decision to approve. For the local courts of the District now to arrogate to themselves the ability to adjudicate such disputes, squarely in the face of the agreed-upon language in the Compact, represents an affront to the sovereignty of the States that should not be countenanced.

CONCLUSION

For the foregoing reasons, petitioner respectfully requests that this Court issue a writ of certiorari to reverse the judgment below.

Respectfully submitted,

E. BARRETT PRETTYMAN, JR.*

VINCENT HAMILTON COHEN

ROBERT B. CAVE

PAUL J. LARKIN, JR.

HOGAN & HARTSON

(a partnership including
professional corporations)

815 Connecticut Ave., N.W.

Washington, D.C. 20006

(202) 331-4685

Attorneys for Petitioner

* Counsel of Record

footnote omitted); *accord*, *Board of Educ. v. Rowley*, 102 S. Ct. 3034, 3049-50 n.26 (1982). Because an interstate compact is, fundamentally, an agreement between States rather than between a State and the federal government, this "clear voice" requirement applies with even more force, especially where it is claimed that Congress has modified the terms of a previously-approved interstate compact.

APPENDIX A

DISTRICT OF COLUMBIA COURT OF APPEALS

500 Indiana Avenue, N.W.

Washington, D.C. 20001

(202) 638-7113

Nos. 81-1344, 81-1476, 81-1613,
81-1616, 82-56, 82-301, and 82-345

ROBERTO QASIM, *et al.*,
Appellants,

v.

WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY, *et al.*,
Appellees.

[Filed Mar. 2, 1983]

Before: Newman, Chief Judge; Kelly, Kern, Nebeker,
Mack, Ferren, Pryor, Belson, and Terry, Associate Judges.

ORDER

On consideration of appellees' motion for a stay of the mandate pending application for certiorari and the supplemental exhibit in support thereof, and it appearing that the majority of the judges of this court has voted to deny the aforesaid motion, it is

ORDERED that appellees' motion is denied.

PER CURIAM

[Service list omitted in printing]

* Associate Judge Nebeker would vote to grant the motion.

APPENDIX B

DISTRICT OF COLUMBIA COURT OF APPEALS

ROBERTO QASIM (No. 81-1344),
 SALLIE C. BAKER (No. 81-1616),
 ANNIE CARTER (No. 81-1613),
 FRANCES C. GREEN (No. 82-345),
 OLEON JONES (No. 81-1476),
 and
 WILLIE JAMES ARTIS (No. 82-301),
Appellants,
 v.

WASHINGTON METROPOLITAN AREA
 TRANSIT AUTHORITY, ET AL.,
Appellees.

(Hon. Tim Murphy, Trial Judge)

On Petition for Hearing En Banc

(Argued en banc December 6, 1982
 Decided January 26, 1983)

Albert H. Turkus for appellants. *Robert Cadeaux* was on the brief for appellant Qasim. *John T. Coyne* and *David P. Durbin* entered appearances for appellant Qasim. *James C. Beadles* was on the brief for appellant Jones. *Patrick J. Christmas* was on the brief for appellant Carter. *Roger C. Johnson* was on the brief for appellant Artis. *Jack H. Olender* and *Harlow R. Case*, on behalf of appellant Green, adopted briefs of appellants Qasim and Carter. *Michael A. Pace*, *Albert H. Turkus* and *Timothy J. O'Rourke* were on the joint reply brief for appellants.

Vincent H. Cohen, with whom *Robert B. Cave*, *Don F. Ryder, Jr.*, and *Andrew E. Bederman* were on the briefs, for appellees.

Before NEWMAN, *Chief Judge*, and KELLY, KERN, NEBEKER, MACK, FERREN, PRYOR, BELSON, and TERRY, *Associate Judges*.

Opinion for the court by *Chief Judge* NEWMAN.

Concurring opinion by *Associate Judge* FERREN at p. 7.

NEWMAN, *Chief Judge*: In this en banc review we consider decisions of the Superior Court dismissing these now consolidated tort claims for lack of subject matter jurisdiction. We conclude that the Superior Court has jurisdiction, concurrent with that of the United States District Court, over actions involving the Washington Metropolitan Area Transit Authority (hereinafter WMATA).

I

Appellants, the plaintiffs below, commenced these actions individually against WMATA in the Superior Court for damages for personal injuries allegedly resulting from the negligence of WMATA. WMATA denied all allegations of negligence and, midway through the litigation in each case, moved the court to dismiss these actions for lack of subject matter jurisdiction. WMATA's motions were based on the Washington Metropolitan Area Transit Authority Compact (hereinafter the Compact), the interstate compact that created WMATA. Section 80 of the Compact provided a limited waiver of immunity from liability for contracts and torts. Section 81 provided that "[t]he United States District Courts shall have original jurisdiction, concurrent with the courts of Maryland and Virginia, of all actions brought by or against the Authority." In each of the cases, the Motion to Dismiss was granted. The appeals of these decisions were consolidated in the spring of 1982. Appellants then filed a petition for an initial en banc hearing which was granted in October 1982.

II

Section 4 of the Compact expressly establishes WMATA as an agency of each sovereign signatory to the Compact. As such, WMATA contends it is clothed with the sovereign immunity granted by the eleventh amendment to its parent states. Cf. *Lake County Estates, Inc. v. Tahoe Regional Planning Agency*, 440 U.S. 391 (1979). Sovereign immunity shields a sovereign from suit in its own courts unless the sovereign consents to suit. This doctrine is based "on the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends." *Kawananakoa v. Polyblank*, 205 U.S. 349, 353 (1907). However, the doctrine does not bestow immunity in another sovereign's courts. Such a claim necessarily implicates the power and authority of a second sovereign. Immunity in the courts of another sovereign "must be found either in an agreement, express or implied, between the two sovereigns, or in the voluntary decision of the second to respect the dignity of the first as a matter of comity." *Nevada v. Hall*, 440 U.S. 410, 416 (1979). The WMATA Compact contains no agreement, express or implied, granting immunity to a signatory from suits involving WMATA brought in the courts of the other two signatories. Thus Maryland and Virginia do not have sovereign immunity from suits brought in the District of Columbia courts.

Section 80 of the Compact waives each signatory's immunity from suit in its own courts for "any proprietary functions, in accordance with the laws of the applicable signatory." Provision of mass transportation under the auspices of three governmental bodies is such a function. Thus, Section 80 vests the courts of Maryland, Virginia and the District of Columbia with jurisdiction to entertain tort claims, such as these here, resulting from the allegedly negligent operation of WMATA vehicles.¹

¹ Section 80 also states that WMATA "shall not be liable for any torts occurring in the performance of a governmental function."

III

Jurisdiction of federal district courts over WMATA matters was established in § 81. In § 81, the United States District Courts were granted original jurisdiction, which they otherwise would not enjoy, over all actions involving WMATA. This grant of jurisdiction had a different effect on the United States District Courts located in Maryland and Virginia than it did on the federal district court located here. Section 81 operated to give the former jurisdiction over suits against WMATA—suits that otherwise would have been local matters—without regard to diversity of citizenship or to the amount in controversy.

The United States District Court for the District of Columbia had a unique bifurcated role in 1966, the year the Compact was enacted. It was a court of general jurisdiction as well as federal jurisdiction, with the power to hear all local claims that alleged more than \$10,000 in damages. See *Palmore v. United States*, 411 U.S. 389, 392 n.2 (1973). Consequently, § 81 had a different effect on its jurisdiction. The District Court for the District of Columbia did not need an independent grant of jurisdiction to empower it to hear WMATA actions. In its capacity as a court of general jurisdiction for the District of Columbia, it could already hear WMATA actions that met the \$10,000 requirement. We conclude that all § 81 did to the United States District Court for the District of Columbia was to eliminate the \$10,000 threshold for actions involving WMATA.

IV

The crux of this case is the significance of the failure of § 81 to mention the Court of General Sessions, predecessor of the Superior Court, in the delineation of courts with jurisdiction over WMATA actions. Appellees suggest that the failure of § 81 to mention the Court of General Sessions granted exclusive jurisdiction to the

District Court for cases arising in the District of Columbia. We reject this contention and hold that the grant of jurisdiction of § 81 is concurrent and empowers the federal courts, along with the court of general jurisdiction in the District of Columbia, to hear WMATA actions.

Concurrent jurisdictional grants to federal and state courts are common and exclusive federal jurisdiction has been the exception. Concurrent jurisdiction has been affirmed unless expressly excluded or is in special cases incompatible due to their special nature. *Dowd Box Co. v. Courtney*, 368 U.S. 502, 507 (1962). Thus we look to appellees to make a persuasive argument that the Superior Court lacks subject matter jurisdiction. There are three ways this could be done: by explicit statutory directive, by unmistakable implication for legislative history, or by a clear incompatibility between state court jurisdiction and federal interests. *Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473, 478 (1981). Appellees can make no argument to contravene the grant of concurrent jurisdiction in any of these ways.

There is no explicit statutory directive precluding Superior Court subject matter jurisdiction in this case. D.C. Code § 11-921 (1981) gives the Superior Court plenary jurisdiction over all civil actions brought in the District of Columbia, *Reichman v. Franklin Simon Corp.*, 392 A.2d 9, 12 (D.C. 1978), and no limiting language appears in this jurisdictional grant to preclude jurisdiction over actions involving WMATA. Section 81 does not confine jurisdiction to the federal courts either. Both the Maryland and Virginia state courts can hear cases involving WMATA. And the omission of the Court of General Sessions from a related jurisdictional grant in the Compact has been held not to bar jurisdiction. *See District of Columbia v. Solomon*, 275 A.2d 204, 205 (D.C. 1971). Thus neither § 81 nor the D.C. Code, nor judicial interpretation of these statutes, explicitly prevents the local court system from exercising jurisdiction over WMATA.

Similarly, there is no unmistakable implication from the legislative history of the Compact that Congress intended to preclude the District of Columbia's local court system from exercising jurisdiction. To the contrary, the Compact extended the jurisdiction of the court of general jurisdiction in the District of Columbia, which at that time was the United States District Court, to encompass WMATA actions for under \$10,000. Furthermore, there is no evidence from the legislative history of the District of Columbia Court Reform and Criminal Procedure Act of 1970, Pub. L. No. 91-358, 84 Stat. 473 (1970), that indicates Congress intended to withdraw jurisdiction over WMATA matters from the local courts. Rather, the explicit purpose of that Act was to create one Superior Court with jurisdiction equivalent to that of a state court.

Finally, there is no clear incompatibility between Superior Court jurisdiction and federal interests. Local courts are considered compatible since the state courts of Maryland and Virginia, systems virtually identical to the District's in scope, have jurisdiction. Additionally, if Congress had perceived such an incompatibility between this jurisdiction's handling of WMATA cases and federal interests, it would have acted long ago to prevent the local court from exercising subject matter jurisdiction over these claims. Thus we hold that jurisdiction of the federal court is concurrent with that of the Superior Court.

Reversed.

FERREN, *Associate Judge*, concurring: I concur in *Chief Judge* NEWMAN's opinion for the court. I write separately, however, to clarify an ambiguity. The opinion of the court states at the beginning of Part II:

Section 4 of the Compact expressly establishes WMATA as an agency of each sovereign signatory to the Compact. As such, WMATA contends it is

clothed with the sovereign immunity granted by the eleventh amendment to its parent states. Cf. *Lake County Estates, Inc. v. Tahoe Regional Planning Agency*, 440 U.S. 391 (1979).

I understand this statement to mean that we assume solely for the sake of argument—we do not decide—that WMATA is entitled to sovereign immunity pursuant to the guidelines in *Lake County Estates, Inc.*, *supra*.

APPENDIX C

SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
CIVIL DIVISION

C.A. No. 6341-78

ROBERTO QASIM, SAUDAH QASIM,
v. *Plaintiffs,*
W.M.A.T.A. and D. M. REEDER,
Defendants.

[Filed Nov. 6, 1981]

ORDER

This Court having been assigned to the Motions Division for the final chapter of the 1981 Calendar, and being advised that this case was to be scheduled to be heard during that period, and the Court having reviewed the pleadings in the case and having concluded, pursuant to SCR 12-1(i), that oral argument is not necessary, it is hereby

ORDERED that defendants' Motion to Dismiss be and hereby is GRANTED; and it is further

ORDERED that the above-captioned matter be and hereby is DISMISSED.

SO ORDERED.

/s/ Tim Murphy
TIM MURPHY
Judge

Date: November 5, 1981

[Certificate of service omitted in printing]

10a

APPENDIX D

**SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
CIVIL DIVISION**

Civil Action No. 3505-79

SALLIE C. BAKER,

Plaintiff

v.

WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY, *et al.*,

Defendants

Civil Action No. 7272-79

CLARENCE E. TAYLOR,

Plaintiff

v.

DISTRICT OF COLUMBIA, *et al.*,

Defendants

[Filed Nov. 25, 1981]

ORDER

This matter came before the Court on the defendant WMATA's Motion to Dismiss. Having considered the motion and memorandum in support thereof, the Court this 25th day of November, 1981, hereby:

ORDERS, that the defendant WMATA's Motion to Dismiss be, and is hereby granted; and it

FURTHER ORDERS, that the above-captioned matter be, and is hereby dismissed, as to defendant WMATA.

/s/ Judge Murphy
JUDGE MURPHY
Judge

[Service list omitted in printing]

APPENDIX E

**SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
CIVIL DIVISION**

Civil Action No. 8478-77

ANNIE CARTER,

Plaintiff

v.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY,
Defendant

[Filed Dec. 4, 1981]

ORDER

This matter came before the Court on the defendant WMATA's Motion to Dismiss. Having considered the motion and memorandum in support thereof, the Court this 4th day of December, 1981, hereby:

ORDERS, that the defendant's Motion to Dismiss be, and is hereby granted; and it

FURTHER ORDERS, that the above-captioned matter be, and is hereby dismissed.

/s/ Judge Murphy
JUDGE MURPHY
Judge

[Service list omitted in printing]

APPENDIX F

SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
CIVIL DIVISION

C.A. No. 16861-80

FRANCES C. GREEN,

Plaintiff,

v.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY,
Defendant.

ORDER

This matter having come before the Court on defendant's Motion to Dismiss and the Court having taken the matter under advisement to allow the plaintiff to submit an Opposition thereto, and the Court having reviewed the submitted pleadings, it is hereby

ORDERED that the defendant's Motion to Dismiss be and hereby is GRANTED for the reasons set forth in the defendant's Memorandum of Points and Authorities in Support of Motion to Dismiss, and it is further

ORDERED that the plaintiff's complaint be and hereby is DISMISSED Without Prejudice to the action being brought in the United States District Court for the District of Columbia.

SO ORDERED.

/s/ Tim Murphy
TIM MURPHY
Judge

Date: February 12, 1982

[Certificate of service omitted in printing]

APPENDIX G

**SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
CIVIL DIVISION**

Civil Action No. 12392-79

OLEON JONES,

Plaintiff

v.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY,
Defendant

[Filed Nov. 30, 1981]

ORDER

This matter came before the Court on the defendant WMATA's Motion to Dismiss. Having considered the motion and memorandum in support thereof, the Court this 30th day of November, 1981, hereby:

ORDERS, that the defendant's Motion to Dismiss be, and is hereby granted; and it

FURTHER ORDERS, that the above-captioned matter be, and is hereby dismissed.

/s/ Judge Murphy
JUDGE MURPHY
Judge

[Service list omitted in printing]

APPENDIX H

**SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
CIVIL DIVISION**

C.A. No. 13485-79

WILLIE JAMES ARTIS,
Plaintiff,
v.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY,
Defendant.

ORDER

This matter having come before the Court on defendant's Motion to Dismiss and the Court having taken the matter under advisement to allow the plaintiff to submit an Opposition thereto, and the Court having reviewed the submitted pleadings, it is hereby

ORDERED that the defendant's Motion to Dismiss be and hereby is GRANTED for the reasons set forth in the defendant' Memorandum of Points and Authorities in Support of Motion to Dismiss, and it is further

ORDERED that the plaintiff's complaint be and hereby is DISMISSED Without Prejudice to the action being brought in the United States District Court for the District of Columbia.

SO ORDERED.

/s/ Tim Murphy
TIM MURPHY
Judge

Date: February 12, 1982

[Certificate of service omitted in printing]

APPENDIX I

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

Article I, [§] 8, cl. 9, provides:

The Congress shall have Power * * * To constitute
Tribunals inferior to the Supreme Court;

Article I, [§] 10, cl. 3, provides, in pertinent part:

No State shall, without the Consent of Congress,
* * * enter into any Agreement or Compact with
another State * * *

Article III, § 1, provides:

The judicial Power of the United States, shall be
vested in one supreme Court, and in such inferior
Courts as the Congress may from time to time or-
dain and establish. The Judges, both of the supreme
and inferior Courts, shall hold their Offices during
good Behavior, and shall, as stated Times, receive for
their Services, a Compensation, which shall not be
diminished during their Continuance in Office.

The Eleventh Amendment to the Constitution of the
United States provides:

The Judicial power of the United States shall not be
construed to extend to any suit in law or equity,
commenced or prosecuted against one of the United
States by Citizens of another State, or by Citizens
or Subjects of any Foreign State.

Section 2 of the WMATA Interstate Compact reads as
follows:

"PURPOSE

"2. The purpose of this Title is to create a re-
gional instrumentality, as a common agency of each
signatory party, empowered, in the manner herein-

after set forth, (1) to plan, develop, finance and cause to be operated improved transit facilities, in coordination with transportation and general development planning for the Zone, as part of a balanced regional system of transportation, utilizing to their best advantage the various modes of transportation, (2) to coordinate the operation of the public and privately owned or controlled transit facilities, to the fullest extent practicable, into a unified regional transit system without unnecessary duplicating service, and (3) to serve such other regional purposes and to perform such other regional functions as the signatories may authorize by appropriate legislation.

Section 4 of the WMATA Interstate Compact reads as follows:

“WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

“4. There is hereby created, as an instrumentality and agency of each of the signatory parties hereto, the Washington Metropolitan Area Transit Authority which shall be a body corporate and politic, and which shall have the powers and duties granted herein and such additional powers as may hereafter be conferred upon it pursuant to law.

Section 78 of the WMATA Interstate Compact reads as follows:

“TAX EXEMPTION

“78. It is hereby declared that the creation of the Authority and the carrying out of the corporate purposes of the Authority is in all respects for the benefit of the people of the signatory states and is for a public purpose and that the Authority and the Board

will be performing an essential governmental function, including, without limitation, proprietary, governmental and other functions, in the exercise of the powers conferred by this Title. Accordingly, the Authority and the Board shall not be required to pay taxes or assessments upon any of the property acquired by it or under its jurisdiction, control, possession or supervision or upon its activities in the operation and maintenance of any transit facilities or upon any revenues therefrom and the property and income derived therefrom shall be exempt from all federal, State, District of Columbia, municipal and local taxation. This exemption shall include, without limitation, all motor vehicle license fees, sales taxes and motor fuel taxes.

Section 80 of the WMATA Interstate Compact reads as follows:

"LIABILITY FOR CONTRACTS AND TORTS

"80. The Authority shall be liable for its contracts and for its torts and those of its Directors, officers, employees and agent committed in the conduct of any proprietary function, in accordance with the law of the applicable signatory (including rules on conflict of laws), but shall not be liable for any torts occurring in the performance of a governmental function. The exclusive remedy for such breach of contracts and torts for which the Authority shall be liable, as herein provided, shall be by suit against the Authority. Nothing contained in this Title shall be construed as a waiver by the District of Columbia, Maryland, Virginia and the counties and cities within the Zone or any immunity from suit.

Section 81 of the WMATA Interstate Compact reads as follows:

"JURISDICTION OF COURTS

"81. The United States District Court shall have original jurisdiction, concurrent with the Courts of Maryland and Virginia, of all actions brought by or against the Authority, and to enforce subpoenas issued under this Title. Any such action initiated in a State Court shall be removable to the appropriate United States District Court in the manner provided by Act of June 25, 1948, as amended (28 U.S.C. 1446).

APPENDIX J

DISTRICT OF COLUMBIA COURT OF APPEALS

500 Indiana Avenue, N.W.

Washington, D.C. 20001

(202) 638-7113

Nos. 81-1344, 81-1476, 81-1613, 81-1616,
82-56, 82-301, and 82-345

ROBERTO QASIM, *et al.*,

v.

Appellants,

WASHINGTON METROPOLITAN AREA

TRANSIT AUTHORITY, *et al.*,

Appellees.

[Filed Mar. 8, 1983]

Before: Newman, Chief Judge; Kelly, Kern, Nebeker,
Mack, Ferren, Pryor, Belson, and Terry, As-
sociate Judges.

ORDER

It is ORDERED, *sua sponte*, that the caption of this
court's opinion and judgment filed January 26, 1983, is
amended by including therein:

No. 82-56:

SANDRA C. BUTTERFIELD, *et al.*,

v.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

CA 16938-80

PER CURIAM

[Service list omitted in printing]